IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 6871 of 2001

For Approval and Signature:
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RATNASHILA COOP HOUSING SOCIETY LTD
Versus
STATE OF GUJARAT

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Appearance: MR AJ PATEL for the Petitioner.
Mr.M.K. Dagli, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-2
RULE SERVED BY DS for Respondent No. 1-3
MR JM BAROT for Respondent No. 3
MR JA ADESHRA for Respondent No. 4
MR ISHVERLAL J NAIK for Respondent No. 4
MR MB GANDHI for Respondent No. 4

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/09/2002

ORAL JUDGEMENT

By filing this petition, the petitioner has prayed for quashing and setting aside the impugned orders at Annexures 'K' and 'L' and has also prayed that the development permission granted at Annexure 'B' be restored.

As per the averment in paragraph 2 of the petition, the petitioner-Society is a registered society

under the Gujarat Cooperative Societies Act. The same was registered with an object of providing houses to its members. The petitioner purchased lands bearing City Survey Nos. 2729 to 2733, totalling 663.60 sq. metres, situated in the limits of town of Vapi by way of registered sale deeds executed by the owners of these lands. There is some discrepancy in the total area of the said lands. It seems that after the lands in question were purchased by the petitioner, respondent No.4 raised certain objections regarding the area of the lands purchased by the petitioner-Society and gave an application to the Collector, Valsad, requesting him to hold an enquiry as to the actual area of the lands in question. In the meanwhile, the petitioner had applied to the respondent-Municipality for permitting the petitioner-Society for developing the said lands for the purpose of constructing houses for its members. It is contended by the petitioners that the said application was made under the provisions of the Town Planning Act and the matter was referred to the Town Planning and City Improvement Committee of the Municipality and after examining the matter, the Committee passed a Resolution dated 29.4.2000, recommending to grant development permission to the petitioner as applied for. On the basis of the recommendation, the Municipality granted development permission to the petitioner on 22.5.2000, which is at Annexure 'B' to the petition. In the meanwhile, the Collector had called for the report from the Superintendent, Land Records, Valsad, regarding the actual measurements of the lands in question and the Superintendent, Land Records, Valsad, submitted a report on 3.7.2000 to the Collector to the effect that the matter is required to be sent to the City Survey Superintendent for an enquiry as to the measurement of the lands in question. It is argued by the petitioner that on the basis of the development permission, the petitioner made all preparations for proceeding with the construction of the houses. Subsequently, respondent No.4 filed an appeal before the Collector, Valsad, under Section 258 of the Gujarat Muncipalities Act, challenging the development permission granted to the petitioner by the Municipality. The Collector thereafter, by his order dated 19.10.2000, set aside the Resolution dated 29.4.2000 passed by the Town Planning and City Improvement Committee of the Municipality as well as the permission, dated 22.5.2000, granted by the Municipality and directed that the status quo ante be restored on the site.

The petitioner carried the aforesaid order by way of revision application before the State Government,

being Revision Application No.57 of 2000. The Deputy Secretary of the Government of Gujarat dismissed the said revision application by his order dated 26.7.2001. Being aggrieved by the aforesaid orders, i.e., the order of the Collector and the State Government, the petitioner has ultimately approached this Court by way of this petition.

Mr.Patel, appearing for the petitioner, strongly submitted that the Collector has no power to take the matter under Section 258 of the Municipalities Act since the decision of the Town Planning Committee cannot be the subject matter of proceeding under Section 258 of the Act. Mr.Patel submitted that the Collector has no jurisdiction under Section 258 to set aside the development permission granted to the petitioner by the Town Planning Committee. He submitted that the order of the Collector is without jurisdiction as the permission is granted by the Municipality under the Gujarat Town Planning and Urban Development Act, 1976 and, therefore, the Collector cannot exercise the powers under the Municipalities Act by resorting to the provisions of Section 258 of the Municipalities Act. On behalf of the petitioner, it is submitted by Mr.Patel that the order of the Collector is bad in law and contrary to the facts of the case. Mr.Patel also submitted that Rule of 40% built up area cannot be applied so far as the land in question is concerned.

I have heard the parties in detail on this point. So far as the question of maintainability of such appeal is concerned, in my view, the said question is required to be decided by the Collector whether, under Section 258 of the Gujarat Municipalities Act, appeal is maintainable if it is held that the proceedings are initiated under the Town Planning Act by the Municipality. Considering the facts and circumstances of the case, in my view, the matter is required to be sent back to the Collector for considering all these questions raised by Mr.Patel in this petition asking the Collector to decide the appeal proceedings again. While deciding the same, the Collector may address himself whether appeal under Section 258 is maintainable and whether the petitioner has really encroached upon any land. It is required to be noted that the petitioner was permitted by interim order of this court to raise construction in question. Considering the aforesaid aspect of the matter, in my view, the matter is required to be sent back to the Collector for fresh decision.

In the facts and circumstances of the case, the petition is allowed and the matter is sent back to the

Collector, Valsad for reconsideration of the aforesaid question. The Collector shall examine whether at the relevant time, the proceedings under Section 258 of the Act were maintainable before him, as, according to the petitioner, the decision was taken by the Town Planning Committee, exercising powers under the Town Planning Act, and under Section 258 of the Act, the Collector had no jurisdiction to consider the Resolution passed by such Committee. The Collector shall, thereafter, also examine the question about the actual measurement and area of the land in question, which is in the possession of the petitioner. Mr.Patel has fairly stated that the petitioner is not going to encroach upon any land of the State Government if he is permitted to make construction and by virtue of the interim order of this Court, he has already started construction. In this behalf, it will be open for the Collector to call for appropriate measurement of the area through the Survey Officer of the area in question and after that, the Collector himself may examine the actual area, which is in the possession of the petitioner, and on that basis, may consider the question about construction which is going to be put up or which is already started by the petitioner. In short, if the petitioner is making construction in the area, which is in its possession legally and as per valid title, the Collector may consider the said aspect sympathetically, because, by virtue of the interim order, the petitioner was permitted to make construction. Ultimately, even if it is found that the petitioner is making construction contrary to byelaws or building byelaws, but such construction is already being done in the land of the petitioner, then the Municipality even can be asked to regularise the construction by charging the requisite fees as per the Rules, and in accordance with law.

Of course, rest of the questions is to be decided only in case the Collector comes to the conclusion that he has jurisdiction to decide the question under Section 258 of the Act. Considering the facts and circumstances of the case, the Collector may take such decision afresh within a period of three months from the date of receipt of the writ of this Court.

Petition is allowed accordingly. Rule is made absolute to the aforesaid extent, with no order as to costs.

Writ to be sent down forthwith.

19th September, 2002 ( P.B. Majmudar, J. )

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(apj)